

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-185661

DATE: JUL 22 1976

MATTER OF: General William W. Momyer, USAF, Retired

- DIGEST:
1. A renewed 30-day exemption from reduction in retired pay in the fiscal year in which a retired Regular military officer's previous excepted appointment as a consultant to a Federal agency is converted, would be in violation of the Dual Compensation Act (5 U.S.C. 5532). Where an appointment conversion is merely in the nature of a continuation and an extension of a previous excepted appointment, it is not a "new appointment" for purposes of applying the multiple appointment rule of 5 U.S.C. 5532(c)(2)(ii), but is, instead, a routine personnel action.
 2. Where a retired military member consultant receives a second intermittent appointment, and an entire fiscal year has intervened since the expiration of the consultant's previous intermittent appointment, he is not entitled to an additional 30-day exemption from reduction in military retired pay if the second appointment appears to be only a renewal of the initial appointment.

This action is in response to a letter dated October 3, 1975, with enclosures, from the Accounting and Finance Officer, Air Force Accounting and Finance Center, Denver, Colorado 80205, requesting an advance decision concerning the propriety of making payment on a voucher for \$1,305.60, in favor of General William W. Momyer, 715-03-3995, USAF, Retired, for additional retired pay for the period April 15, 1975, through June 5, 1975. The letter was forwarded to our Office by the Chief, Finance Group, Directorate of Accounting

PUBLISHED DECISION
55 Comp. Gen.

and Finance, Headquarters United States Air Force, and has been assigned Air Force Request No. DO-AF-1244 by the Department of Defense Military Pay and Allowance Committee.

The record in the case shows that on April 23, 1974, the member, a retired Regular officer of the Air Force, accepted employment as a consultant with Headquarters United States Air Force, under an excepted appointment (Intermittent, Code 171), not to exceed April 14, 1975. It is further indicated in the file that on April 15, 1975, General Momyer's appointment in the same position was converted to an excepted appointment (Intermittent, Code 651), not to exceed August 31, 1975.

It is stated in the submission that under the initial appointment effective April 23, 1974, through April 14, 1975, the member worked 18 days in fiscal year 1974 and 70 days in fiscal year 1975. In accordance with 5 U.S.C. 5532(c)(2)(i), the member's retired pay was exempted from reduction for the first 30 days worked under this appointment. During the succeeding period (April 15, 1975, through July 31, 1975), he worked 30 additional days in fiscal year 1975 and 25 days in fiscal year 1976.

The Accounting and Finance Officer requests a decision as to whether the second period of employment may be treated as a "new appointment" which would thereby entitle the member to a renewed 30-day dual compensation exemption for fiscal year 1975 under the multiple appointment rule of 5 U.S.C. 5532(c)(2)(ii), and whether the answer would be the same if, in fact, the appointments were respectively dated July 1, 1973, not to exceed June 30, 1974, and July 1, 1975, not to exceed June 30, 1976.

Section 5532 of title 5, United States Code (1970), provides in pertinent part:

"(a) For the purpose of this section, 'period for which he receives pay' means the full calendar period for which a retired officer of a regular component of a uniformed service receives the pay of a position when employed on a full-time basis, but only the days for which he actually receives that pay when employed on a part-time or intermittent basis.

"(b) A retired officer of a regular component of a uniformed service who holds a position is entitled to receive the full pay of the position, but during the period for which he receives pay, his retired or retirement pay shall be reduced to an annual rate equal to the first \$2,000 of the retired or retirement pay plus one-half of the remainder, if any. In the operation of the formula for the reduction of retired or retirement pay under this subsection, the amount of \$2,000 shall be increased, from time to time, by appropriate percentage in direct proportion to each increase in retired or retirement pay under section 1401a(b) of title 10 to reflect changes in the Consumer Price Index.

"(c) The reduction in retired or retirement pay required by subsection (b) of this section does not apply to a retired officer of a regular component of a uniformed service—

* * * * *

"(2) employed on a temporary (full-time or part-time) basis, any other part-time basis, or an intermittent basis, for the first 30-day period for which he receives pay.

"The exemption from reduction in retired or retirement pay under paragraph (2) of this subsection does not apply longer than—

"(1) the first 30-day period for which he receives pay under one appointment from the position in which he is employed, if he is serving under not more than one appointment; and

"(11) the first period for which he receives pay under more than one appointment, in a fiscal year, which consists in the aggregate of 30 days, from all positions in which he is employed, if he is serving under more than one appointment in that fiscal year."

In our decision B-173292, October 1, 1971 (51 Comp. Gen. 189), we held that the exemption granted by 5532(c)(2)(ii) is to be applied to the first 30 days of work in each fiscal year during which the retired officer receives civilian pay under two or more appointments.

The present case is distinguishable from that case in that the appointments presently at issue involve no change in the appropriation to be charged with the salary and traveling expenses of the employee and no change in the agency under which the service is to be performed. Although this Office has not previously addressed itself to the interpretation of the words, "more than one appointment" as embraced by 5 U.S.C. 5532(c)(2)(ii), we have on several occasions held that routine personnel actions within the same agency which involve no change in the salary rate and little apparent change in duties are not deemed to be new appointments. See B-171181, December 14, 1970; B-167815(1), January 13, 1970; and B-166146, May 15, 1969.

It is our view, therefore, that where an appointment conversion involves no change in the appropriation to be charged with the salary and traveling expenses of the officer or employee, no change in the department or agency under which the service is to be performed and no change in the position, but rather an extension in the original appointment thereto, it is not a "new appointment." Accordingly, such a conversion under the present circumstances operates only as an extension of the initial appointment beyond its original termination date, and subsequent compensation to the retired officer may not be regarded as being made, "under more than one appointment" within the meaning of the statute. Therefore, General Momyer's entitlement to the 30-day dual compensation exemption is limited to the first 30 days for which he received civilian pay under his appointment dated April 23, 1974, and payment on his voucher in the amount of \$1,305.60 is not authorized.

With regard to the question as to whether the answer would be the same if, in fact, the appointments were respectively dated July 1, 1973, not to exceed June 30, 1974, and July 1, 1975, not to exceed June 30, 1976, paragraph 1-3c(3), Federal Personnel Manual, July 16, 1971, provides that in the context of whether a position filled by a consultant in 1 year is different from the

B-185661

one he filled in a previous service year, a different position means a position having duties and responsibilities that are recognizably different from those of the previous assignment and that cannot be considered a continuation, outgrowth, or extension of that assignment. Paragraph 1-3c(1), id., permits the renewal of consultants' intermittent appointments from year to year. Since the appointment presently in question involves no change in appropriation, agency or position but is an extension of the original appointment, it would appear that the second appointment would be considered as only a renewal of the initial appointment.

Based on the foregoing, it is our view that 5 U.S.C. 5532(c)(2)(i) would apply and the exemption from the reduction in retired pay would apply only to the first 30-day period for which the retired officer received pay under the appointment.

R.F. KELLER

'Deputy' Comptroller General
of the United States